

**THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD**

In the Matter of:)	
)	
RS, Inc.,)	
t/a Cap Liquors)	License Number: 24522
)	Case Number: 24522-09/045P
Renewal Application for Retailer's)	Order Number: 2010-005
Class A License)	
at premises)	
1301 South Capitol St., S.W.)	
Washington, D.C.)	

BEFORE: Charles Brodsky, Acting Chairperson
Mital M. Gandhi, Member
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member

ALSO PRESENT: Simon Osnos, Counsel for the Applicant

Mary Williams, on behalf of the Group of Five or More
Protestants

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The Application, filed by RS, Inc., t/a Cap Liquors (Applicant), for a Renewal of its Retailer's Class A License at the location of 1301 South Capitol Street, S.W., Washington D.C., came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on June 1, 2009 and a Protest Status Hearing on July 29, 2009. The Application was protested by a group of five or more individuals represented by Mary Williams (Protestants). The protest was not settled and the matter was scheduled for a Protest Hearing on September 30, 2009, at which time testimony was taken by the Board and the parties rested. The Protest Hearing on September 30, 2009, is the subject of this Order.

Pursuant to D.C. Official Code § 25-313(b), the filed protest issues are whether the Application for renewal of the Applicant's Class A license would adversely affect the

peace, order, and quiet of the neighborhood and the public safety, and whether the renewal would adversely impact the residential parking and vehicular and pedestrian safety. The Board, having considered the evidence, the testimony of witnesses, the arguments of counsel, and the documents comprising the Board's official file, makes the following:

FINDINGS OF FACT

1. The Applicant's establishment is located at 1301 South Capitol Street, S.W., Washington, D.C. *See Alcoholic Beverage Regulation Administration (ABRA) Protest File* for License Number 24522 and *Transcript, September 30, 2009* (hereinafter *Tr. 9/30/09*). It is located at the corner of South Capitol and N Streets S.W., directly across from the Nationals Baseball Stadium. *Tr. 9/30/09*, at 27.
2. The Protestants, represented by Mary Williams, lodge this protest against the Applicant based on the effect that this renewal of the Applicant's license will have on the general peace, order, and quiet of the area. The protest is also based on the adverse impact the renewal will have on residential parking and vehicular and pedestrian safety. *See generally ABRA Protest File*, protest petition included therein, License Number 75686; *see also Tr. 9/30/09*.
3. The Board called ABRA Investigator Vincent Parker, who prepared the Protest Investigation Report in this matter. *Tr. 9/30/09*, at 18. The Protestants' main concerns are panhandling, traffic problems, minors purchasing alcohol, loitering, drug dealers, parking lot problems, trash and litter, the sale of drug paraphernalia at the establishment and the establishment's failure to purchase its inventory from a D.C. licensed wholesaler. *Tr. 9/30/09*, at 18-19.
4. From July 31, 2009, through September 18, 2009, ABRA investigators, including Investigator Parker, monitored the Applicant's establishment on 20 occasions at all times of day. *Tr. 9/30/09*, at 19, 37. As a part of his investigation, Investigator Parker interviewed Joyce Lam, daughter of the Applicant. *Tr. 9/30/09*, at 19. Ms. Lam addressed the issues raised by the Protestants and stated that the establishment does its best to stop the panhandling and the loitering. *Tr. 9/30/09*, at 19, 64. The establishment checks identification on every purchase of alcoholic beverages. *Tr. 9/30/09*, at 19. The establishment now sells its product in clear plastic bags to stem the public drinking outside the store. *Tr. 9/30/09*, at 20. Ms. Lam also informed Investigator Parker that no one at the establishment has ever witnessed drug dealers or drug users and if they had, they would call the Metropolitan Police Department (MPD) and report it. *Tr. 9/30/09*, at 20. According to Ms. Lam, the establishment does not sell drug paraphernalia and it always buys its alcoholic beverages from D.C. licensed wholesalers. *Tr. 9/30/09*, at 20.
5. On ten of the 20 visits to the establishment, ABRA investigators observed about one to three people loitering outside the store. *Tr. 9/30/09*, at 20, 26-27, 44. On September 3, 2009, Investigator Parker observed that the Applicant asked the loiterers to leave the premises. *Tr. 9/30/09*, at 34, 77. He did not witness any disorderly conduct,

loud noises or untoward behavior on the ten visits that he observed the loiterers. *Tr. 9/30/09, at 45.* He was not able to ascertain if any one entering the establishment was intoxicated. *Tr. 9/30/09, at 65.*

6. During all 20 of the ABRA visits, investigators observed that there was plenty of public parking for customers. *Tr. 9/30/09, at 20-21.* There is a parking lot in the rear of the store that holds approximately ten vehicles and Investigator Parker never saw the lot full on his 18 visits to the establishment. *Tr. 9/30/09, at 41-43.* The Applicant did tell Investigator Parker that his employees use the lot as well. *Tr. 9/30/09, at 74.* Although there is a lot of traffic on South Capitol Street S.W., there is not much traffic on N Street, S.W. *Tr. 9/30/09, at 35.* There is parking available to non-residents on N Street, S.W. *Tr. 9/30/09, at 42, 75.* There is not a lot of foot traffic in the area when there are not any events scheduled at Nationals Baseball Stadium, but more people walk to the store than drive. *Tr. 9/30/09, at 35-36, 78-79.* Investigator Parker did not monitor or inspect vacant lots or the alleys adjacent to the establishment. *Tr. 9/30/09, at 51, 58.*

7. The ABRA investigators never observed panhandling, public urination, public drinking, drug use or drug sales during their 20 visits. *Tr. 9/30/09, at 21, 26, 28, 32.* On September 17, 2009, Investigator Parker visited the establishment and conducted an inspection of the licensee. *Tr. 9/30/09, at 21.* There were no violations found at the time of the inspection. *Tr. 9/30/09, at 21.* However, Investigator Parker did observe that the establishment had no security personnel present as required by the Applicant's Voluntary Agreement. *Tr. 9/30/09, at 21, 30-31.* There were no other security concerns observed by Investigator Parker. *Tr. 9/30/09, at 50.*

8. Investigator Parker did observe small plastic cups for sale behind the counter near the cash register and advised the Applicant that it was against the law to offer the plastic cups to his customers. *Tr. 9/30/09, at 21, 39-40.* Investigator Parker reviewed the invoices kept by the Applicant and noted that they were issued by D.C. licensed wholesalers for purchases made of the inventory. *Tr. 9/30/09, at 21-22.* He also conducted a thorough inspection of the physical property of the establishment and did not see any drug paraphernalia displayed for sale or hidden anywhere in the store. *Tr. 9/30/09, at 22.* Investigator Parker observed the lighting and security cameras inside and outside the establishment and noted that the cameras were operational. *Tr. 9/30/09, at 22, 69-70.* He also noted that the interior and the exterior of the establishment were free of trash, litter and debris. *Tr. 9/30/09, at 22, 67-68.*

9. Investigator Parker testified that on September 22, 2009, an undercover ABRA investigator entered the establishment, purchased alcoholic beverages and was provided with a small plastic cup. *Tr. 9/30/09, at 22, 40, 70.* As a result of the alleged violation, the Applicant was charged with violation of D.C. Official Code § 25-741 and the enforcement matter is now pending before the Board. *See ABRA Show Cause File No. 09-CMP-71; Tr. 9/30/09, at 32.* Investigator Parker also observed a group of juveniles approach a loiterer who then proceeded inside the establishment. *Tr. 9/30/09, at 29; 37-39.* Although he observed the loiterer hand one of the juveniles a bag, Investigator Parker was not certain of the bag's contents. *Tr. 9/30/09, at 29-30.*

10. Investigator Parker reviewed the MPD crime statistics for the Applicant's location during the period of September 1, 2008, through August 16, 2009, and noted that there were 59 total calls for service made during that time. *Tr. 9/30/09, at 22-23, 31.* There is one other ABC licensed establishment in the area; 7-Eleven which is located at 1101 South Capitol Street, S.W. (Retailer Class B, License No. 26520. *Tr. 9/30/09, at 23-24, 53.* Investigator Parker testified that he believes the sale of alcoholic beverages affected the peace, order and quiet of the neighborhood. *Tr. 9/30/09, at 24.* Investigator Parker's report was admitted as the Board's Exhibit 1. *Tr. 9/30/09, at 277.*

11. The Applicant called MPD Officer Maurice Thompson as a witness. *Tr. 9/30/09, at 81.* Officer Thompson is a Master Patrol Officer and has been with MPD for 23 years. *Tr. 9/30/09, at 82, 89.* Officer Thompson is familiar with the neighborhood around South Capitol and N Streets, S.W. where he has patrolled for 18 of his 23 years. *Tr. 9/30/09, at 82-83, 89.* He works the evening shift from 2:00 p.m. to 10:00 p.m. *Tr. 9/30/09, at 83.* He testified that there are regular disorderly conduct calls but he would not state that it was a direct effect of the Applicant's establishment. *Tr. 9/30/09, at 84, 99.* He also does not believe that there is a correlation between the panhandlers and the establishment. *Tr. 9/30/09, at 85.* Officer Thompson did state that there is an increase in panhandling when there is a home game at the baseball stadium. *Tr. 9/30/09, at 85-86.*

12. MPD has focused a great deal of attention in that area to curtail panhandlers and loiterers. *Tr. 9/30/09, at 86, 100-101.* Officer Thompson testified that there has been no violence, aggressive conduct or drug activity by any of the individuals. *Tr. 9/30/09, at 87-89.* The Applicant has called MPD and Officer Thompson several times to inform them of the panhandlers and loiterers. *Tr. 9/30/09, at 88, 92.* If Officer Thompson is not on duty when the calls are received, he ensures that another patrol is responding to the location. *Tr. 9/30/09, at 88-89, 93.* MPD has the discretion to arrest people for public drinking or to have the people empty their alcoholic beverages. *Tr. 9/30/09, at 97-98, 121.* During 2008, there were nine arrests for violations of liquor laws in the neighborhood and in 2009, there were no arrests. *Tr. 9/30/09, at 105-106, 120.* Officer Thompson has observed litter in the neighborhood, but he has not witnessed public urination. *Tr. 9/30/09, at 102, 111.* He does not believe that there is anything more that the Applicant can do to control the loiterers and panhandlers. *Tr. 9/30/09, at 110-111.*

13. The Protestants called MPD Lieutenant Gallucci as a witness on behalf of the Protestants. *Tr. 9/30/09, at 114.* Lt. Gallucci is assigned to PSA 104 which includes the neighborhood surrounding the Applicant's establishment. *Tr. 9/30/09, at 115.* He testified that MPD has given that neighborhood special attention due to the complaints MPD received from the area citizens. *Tr. 9/30/09, at 115-116, 123.* The complaints included panhandling, disorderly conduct, littering, public drinking and urination. *Tr. 9/30/09, at 116.* However, when Lt. Gallucci's officers went to the area to observe, they did not notice any violations or anything out of the ordinary. *Tr. 9/30/09, at 116, 126.* Sergeant Jessup made an arrest on August 22, 2009 for public drinking. *Tr. 9/30/09, at 117.* It is Lt. Gallucci's opinion that unless the establishment hires private security, there is not much more it can do to prevent loitering and panhandling. *Tr. 9/30/09, at 125.* Lt.

Gallucci further opined that the loiterers will recognize security to be private hires and will test them and as a result, they may not be effective. *Tr. 9/30/09, at 129.*

14. The Applicant called Gloria Hamilton as a witness on its behalf. *Tr. 9/30/09, at 130.* Ms. Hamilton resides at 44 O Street, S.W. *Tr. 9/30/09, at 131.* She has lived in the neighborhood for a total of 25 years. *Tr. 9/30/09, at 131.* Ms. Hamilton testified that the neighborhood has seen a big improvement since the Applicant has been operating the establishment. *Tr. 9/30/09, at 132, 145.* Ms. Hamilton believes that this is attributable to the Applicant's efforts to keep the store clean and to keeping the loiterers from hanging around the store. *Tr. 9/30/09, at 133.* Ms. Hamilton passes by the store or frequents the store almost every other day. *Tr. 9/30/09, at 133.* She admits that she is nosy and walks the neighborhood a lot. *Tr. 9/30/09, at 134, 139.* She has never had any problems with people outside the establishment being aggressive or disorderly. *Tr. 9/30/09, at 135.* She has seen little to no litter and no beer cans. *Tr. 9/30/09, at 140-141.* Nor has she witnessed any public drinking or public urination. *Tr. 9/30/09, at 141, 145-146.* Ms. Hamilton is familiar with some of the regular and frequent loiterers. *Tr. 9/30/09, at 142-143.* She knows that some of the loiterers drink, but she does not know if they are alcoholics and she has never seen them enter the establishment intoxicated. *Tr. 9/30/09, at 144.*

15. Ms. Hamilton is a member of the ABC Committee for Advisory Neighborhood Commission (ANC) 6D. *Tr. 9/30/09, at 135.* She is also President of the Syphax Resident Council. *Tr. 9/30/09, at 136.* She testified that the Applicant has donated water, sodas, chips and other things to the resident council meetings. *Tr. 9/30/09, at 136-137.* The Applicant has never donated money or alcoholic beverages. *Tr. 9/30/09, at 137.* Ms. Hamilton testified before the ANC in support of the Applicant, and she believes that the establishment should be permitted to continue to sell alcoholic beverages. *Tr. 9/30/09, at 139, 147-148.* She considers the Applicant to be an asset to the community. *Tr. 9/30/09, at 149.*

16. The Applicant called Gregory Brown as its next witness. *Tr. 9/30/09, at 151.* Mr. Brown resides at 1230 Carrollsburg Place, S.W and has been there for five years. *Tr. 9/30/09, at 151.* He passes by the establishment about twice a week. *Tr. 9/30/09, at 152, 154.* Mr. Brown has observed soda bottles and cans in the alley but he does not know where the litter originates. *Tr. 9/30/09, at 152-153, 161-162.* He has not observed any alcohol containers in the street but does see them occasionally in the alley. *Tr. 9/30/09, at 153.* He considers the litter to be of minimal concern. *Tr. 9/30/09, at 153.* He has not encountered any problems with disorderly or aggressive conduct. *Tr. 9/30/09, at 154.* Mr. Brown is familiar with the loiterers but he does not know them personally and he has not observed them drinking or urinating. *Tr. 9/30/09, at 155-156, 161.* He frequents the establishment to purchase alcoholic beverages but he has not received any free alcohol from the Applicant. *Tr. 9/30/09, at 158-159.* Mr. Brown has observed children inside the store, although they are usually accompanied by adults. *Tr. 9/30/09, at 159-160.* He has never seen the loiterers enter the establishment to purchase alcohol for the minors. *Tr. 9/30/09, at 160.*

17. The Applicant, Mr. Lam, was called as the next witness. *Tr. 9/30/09*, at 168. He has owned Cap Liquors for five years. *Tr. 9/30/09*, at 168. Prior to that, he owned Grand China Carry-Out for 15 years, located at 1201 South Capitol Street, S.W. *Tr. 9/30/09*, at 169. He also was a resident of the neighborhood, living at 1208 Carrollsborg, S.W. for ten years, though he now resides in Virginia. *Tr. 9/30/09*, at 170, 204. Mr. Lam sells tobacco products, telephone cards, cigars, sodas, juice, and D.C. lottery tickets. *Tr. 9/30/09*, at 203. He also sells single containers of beer and malt beverages and half pints or less of spirits. *Tr. 9/30/09*, at 203. His single sales revenue accounts for about 30% to 40% of his proceeds. *Tr. 9/30/09*, at 204.

18. Mr. Lam has made improvements to the establishment in the five years he has owned it; such as renovating the interior, re-cabling the lighting to make the store brighter and cleaning up the exterior area. *Tr. 9/30/09*, at 171. He also installed a new security camera system to improve safety for customers. *Tr. 9/30/09*, at 173-175. The system has five cameras on the exterior of the building and four cameras inside, in addition to six monitors inside the store. *Tr. 9/30/09*, at 172-173. The camera system works 24 hours and retains video memory for up to three months. *Tr. 9/30/09*, at 176.

19. Mr. Lam works at Cap Liquors every day from 10:00 a.m. to 9:00 p.m. *Tr. 9/30/09*, at 176-177. His employees clean the neighborhood around the store three times a day for about 30 minutes each round. *Tr. 9/30/09*, at 177-182, 192-193, 201. They pick up trash that is both discarded products from his store and products from other stores. *Tr. 9/30/09*, at 202. Mr. Lam goes outside about ten times a day himself, to check on the loiterers that he sees on the camera monitors. *Tr. 9/30/09*, at 183. Sometimes the loiterers have purchased beer at his store, but they have never entered inebriated. *Tr. 9/30/09*, at 184. Mr. Lam also does not allow them to sit outside his store and drink in public. *Tr. 9/30/09*, at 184, 198. He has asked them to move along and he testified that they have never caused any problems to other customers. *Tr. 9/30/09*, at 185.

20. Mr. Lam's daughter Joyce attends the community and ANC meetings and works at the establishment on Fridays and Saturdays. *Tr. 9/30/09*, at 185-186. Mr. Lam's son, Jason, has worked at the store for three years, but he does not attend community meetings. *Tr. 9/30/09*, at 187-188. Mr. Lam is familiar with all of the laws and regulations governing his ABC license. *Tr. 9/30/09*, at 189. He also has a Voluntary Agreement that sets forth terms and conditions regarding his operations. *Tr. 9/30/09*, at 190. He was not previously familiar with everything required of him under the Voluntary Agreement, but he is now. *Tr. 9/30/09*, at 190. He is also familiar with the violence that has taken place outside his store in the past. *Tr. 9/30/09*, at 194. He has placed ten calls to MPD to report disorderly conduct. *Tr. 9/30/09*, at 195. Two years earlier, he was robbed of about \$3,000 worth of alcoholic beverages. *Tr. 9/30/09*, at 196-197. Mr. Lam acknowledged that he has received complaints from area neighbors. *Tr. 9/30/09*, at 205.

21. The Protestants called Eric Anderson who has resided at 1244 Carrollsborg Place, S.W. for three and one half years. *Tr. 9/30/09*, at 208-209. Mr. Anderson's property is 50 yards from the establishment and he observes activity down the alley toward the store four times a day when he lets his dog out. *Tr. 9/30/09*, at 209-210. In the time that he

has resided in the neighborhood, he has observed loitering and panhandling in front of the store and in the immediate vicinity of the store. *Tr. 9/30/09*, at 210. On average, there are one to three loiterers, but sometimes there are as many as five. *Tr. 9/30/09*, at 211. They hang out in front of the store, within clear vision of the Applicant. *Tr. 9/30/09*, at 211. He has witnessed people drinking in public, at least once a day, and he believes that the alcohol is purchased at Cap Liquors. *Tr. 9/30/09*, at 211-212. They drink in the alley and they drink in the parking lot. *Tr. 9/30/09*, at 212. A nearby business, Gryphon Technologies, hires private security (off-duty MPD) to monitor the premises and address the panhandling, loitering and public drinking. *Tr. 9/30/09*, at 212- 213. Mr. Anderson also observed public urination on numerous occasions and someone defecated in his driveway in February 2009. *Tr. 9/30/09*, at 213-216, 217. He has received verbal threats of violence. *Tr. 9/30/09*, at 217. He has made numerous calls to MPD regarding these problems but often, by the time MPD arrives, the problem has abated or the people have moved on. *Tr. 9/30/09*, at 217, 235-236. He also attends the MPD PSA 104 monthly meetings to report his concerns. *Tr. 9/30/09*, at 220.

22. With regard to litter, Mr. Anderson observes or picks up about five liquor containers a day. *Tr. 9/30/09*, at 218. The bottles and cans are tucked in and around bushes along the alley and fence. *Tr. 9/30/09*, at 219, 222. He also sees trash and litter on Mr. Lam's property. *Tr. 9/30/09*, at 220. He no longer patronizes Mr. Lam's store and believes that the nexus for most of the neighborhood ills is Cap Liquors. *Tr. 9/30/09*, at 220, 233-234. The problems would significantly reduce if Cap Liquors was no longer in business. *Tr. 9/30/09*, at 234. Mr. Anderson has nothing personally against Mr. Lam, but he does believe that the establishment has had a negative impact on the community. *Tr. 9/30/09*, at 237.

23. Mr. Anderson contacted D.C. Council Member Tommy Wells to indicate his support of the single sales ban and his opposition to the exemptions to that ban. *Tr. 9/30/09*, at 221, 232. He also testified that any improvements that Mr. Lam has made to the establishment have not been that significant and that most of the work undertaken by Mr. Lam began after the protest was filed. *Tr. 9/30/09*, at 222. Mr. Anderson would like for Mr. Lam to hire private security and discontinue the sales of single containers of alcohol. *Tr. 9/30/09*, at 223.

24. Ms. Williams offered a statement as a witness on behalf of the Protestants. *Tr. 9/30/09*, at 238. She resides at 1257 Carrollsburg Place, S.W. and has lived there since 1999. *Tr. 9/30/09*, at 239. She believes that the problems regarding panhandling, littering, public drinking, public urination, public intoxication and parking date back to 2006 when the development began for the Nationals Baseball Stadium. *Tr. 9/30/09*, at 239, 252.

25. Ms. Williams works from home and observes activities all day long. *Tr. 9/30/09*, at 240. The corner where the establishment is located is a lucrative spot for panhandlers and drug addicts due to the pedestrian and vehicular traffic. *Tr. 9/30/09*, at 240-243. She picks up litter in the form of beer cans, bottles and Belicoff vodka pints every day, sometimes as early as 9:00 a.m. *Tr. 9/30/09*, at 244. The litter is generally enclosed in

clear plastic bags such as those sold at Cap Liquors. *Tr. 9/30/09, at 244.* The litter and urination can be traced to public consumption of alcohol. *Tr. 9/30/09, at 245-246.*

26. As a former Clean City Coordinator for the District and as a former ANC Commissioner, Ms. Williams helped draft the litter laws and she also encourages her neighbors to keep the area clean. *Tr. 9/30/09, at 245-246.* She and her neighbors take turns dousing the alley with Clorox and Pine-Sol. *Tr. 9/30/09, at 247.* Ms. Williams also has a concern regarding the purchases of alcohol by loiterers on behalf of minors. *Tr. 9/30/09, at 248-251.* She believes the loiterers are known alcoholics and some have been arrested by MPD for public drinking and intoxication. *Tr. 9/30/09, at 252-254, 256.* She did not agree with the testimony offered by MPD Officer Thompson. *Tr. 9/30/09, at 269.*

27. Ms. Williams also testified that the Applicant allows residents with out-of-state car tags to park in his lot adjacent to the establishment to avoid registering with D.C. *Tr. 9/30/09, at 257.* As a result, his patrons cannot park in the lot and are forced to park on public streets that are reserved for residents. *Tr. 9/30/09, at 257-258.* Ms. Williams also protested the Applicant's alleged sale of drug paraphernalia in the form of glass pipes with the rose, blunts tobacco products and cigarette rolling papers. *Tr. 9/30/09, at 258-260.* She has also observed licensed D.C. wholesalers delivering to the Applicant, but in the past, Ms. Williams has witnessed white vans with Virginia car tags delivering cases of alcoholic beverages to the establishment. *Tr. 9/30/09, at 260-261.*

28. Ms. Williams would like to have Mr. Lam take steps to bar known alcoholics and intoxicated persons from his premises as she believes this will help to abate the problems. *Tr. 9/30/09, at 262, 274.* She would also like to see the return of the ban on the single sale of alcoholic beverages. *Tr. 9/30/09, at 262.* Thirdly, Ms. Williams would like to have Mr. Lam hire private security personnel such as off-duty MPD, for his own sake as well as that of the neighborhood. *Tr. 9/30/09, at 264, 272-273.* She cited several acts of violence that have happened in the vicinity of the store. *Tr. 9/30/09, at 264-267.* She acknowledged that Mr. Lam calls MPD to report the disorderly conduct. *Tr. 9/30/09, at 270.*

CONCLUSIONS OF LAW

29. Pursuant to D.C. Official Code § 25-313(a), an Applicant must demonstrate to the Board's satisfaction that the establishment for which a renewal of a license is sought is appropriate for the locality, section, or portion of the District where it is to be located. The Board concludes that the Applicant has demonstrated that the renewal of its Retailer's Class A License is appropriate for the area in which the establishment is located.

30. The Board further finds, pursuant to D.C. Official Code § 25-313(b)(2) and 23 DCMR § 400.1(a), that the renewal of the Retailer's Class A License would not have an adverse effect on the peace, order, and quiet of the neighborhood, based upon the testimony of Investigator Parker, Ms. Hamilton, Mr. Brown, Lt. Gallucci, Officer Thompson and Mr. Lam. All of these witnesses did not observe the behaviors expressed

by the Protestants with regard to public drinking or public urination or did not believe that the behaviors exhibited by the loiterers could be addressed by the Applicant to any greater extent than he is doing now. Both Officer Thompson and Mr. Lam testified that Mr. Lam calls MPD often on disorderly conduct matters and this was acknowledged by Ms. Williams, the Protestants' representative too.

31. Although the Board credits the testimony of Ms. Williams and Mr. Anderson regarding the litter and loiterers, it does not establish sufficient basis to believe that the Applicant is the direct cause of any peace, order, and quiet concerns or that the concerns can be abated without the permanent removal of the loiterers. Officer Thompson, who is a Master Patrol Officer, stated that he didn't believe there was a direct correlation between the panhandlers and the establishment. Additionally, the Board reviewed the MPD calls for service to the neighborhood and neither the Board, nor MPD could point to a large number of calls for alcohol related incidents tied directly to the establishment. The Board also notes that not all of the trash in the vicinity of the establishment can be tied to the store as well. The Board applauds the Applicant's use of his employees to patrol the establishment's vicinity to control litter and it strongly encourages the Applicant to maintain this practice.

32. The Protestants have requested adherence to the Voluntary Agreement in the form of hiring private security and the Protestants want the Applicant to be prohibited from selling single containers of beer and malt liquor and half-pints of spirits. The Board concurs that adherence to the Voluntary Agreement in all respects is critical to the operation of the licensed establishment and it strongly urges the Applicant to comply with its terms and conditions or it will run the risk of enforcement violations. The Board notes that any breach of the Voluntary Agreement can be made known by the area citizens to ABRA's Enforcement Division for further investigation. With regard to terminating the singles sales exemption, the Board is not inclined to mandate this condition. The exemption was granted as a result of a Fact Finding Hearing on February 11, 2009 and is set to expire on February 11, 2010. Any effort by the Applicant to renew his exemption can be challenged by the Protestants at that time.


33. The Board notes that the Protestants offered evidence as to the impact on residential parking and vehicular and pedestrian safety. However, this testimony was refuted by the testimony of ABRA Investigator Parker who testified that on his 18 visits to monitor the establishment, there was always parking available in the store's parking lot. Additionally, Investigator Parker testified that there was public parking on the cross street and that much of the customer base was pedestrian traffic.

34. Accordingly, the Board finds that the Applicant has demonstrated that the renewal of its Class A license is appropriate for the location and does not adversely impact the peace, order, and quiet of the neighborhood.

ORDER

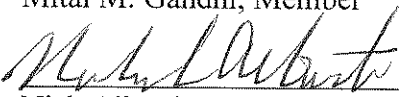
For the reasons stated in the findings of fact, conclusions of law, and the entire record herein, it is hereby **ORDERED** by the Board on this 6th day of January, 2010, that the Application for the renewal of the Class A License for RS, Inc., t/a Cap Liquors, located at 1301 South Capitol Street, N.E., is **GRANTED**.

District of Columbia
Alcoholic Beverage Control Board



Charles Brodsky, Chairperson

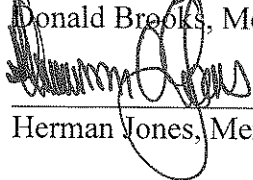
Mital M. Gandhi, Member



Nick Alberti, Member



Donald Brooks, Member



Herman Jones, Member

Pursuant to Section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code §2-510 (2001) and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of the service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington D.C. 20001.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 (April 2004) stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. See D.C. App. Rule 15(b).